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NOV 20 2009

OFFICE OF PETITIONS

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In re Application of Earley et al. :
Application No. 10/072,391 : Decision on Petition
Filing Date: February 5, 2002 :
Attorney Docket No. 13DV-14119 :
:

This is a decision on the petition filed July 15, 2009, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

Background

On October 14, 2008, the Office mailed a Notice of Allowance requiring payment of the issue fee and publication fee. The Notice set a statutory period for reply of three (3) months. The Office did not receive a reply to the Notice of Allowance. As a result, the Office deemed the application to have become abandoned as of January 15, 2009.

The Office mailed a Notice of Abandonment on February 10, 2009.

A petition under 37 CFR 1.181 was filed February 25, 2009. The petition alleged non-receipt of the Notice of Allowance. The petition was accompanied by a docket report for the instant application.

The Office mailed a decision dismissing the petition on May 15, 2009. The decision stated,

MPEP 711.03(c)(I)(A) states, with emphasis added,

[A]n allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the

Office may grant the petition to withdraw the holding of abandonment and remail the Office action.... A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the *master docket* for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a *copy of the master docket* report showing all replies docketed for a date three months from the mail date of the nonreceived Office action *must be submitted* as documentary proof of nonreceipt of the Office action. *If no such master docket exists, the practitioner should so state....*

Petitioner has not submitted a copy of the relevant portion of a master docket or stated the law firm does not maintain such a docket.... Any request for reconsideration should include a copy of the relevant part of the firm's master docket or state the law firm does not maintain such a docket.

The instant petition was filed July 15, 2009.

Discussion

The instant petition asserts a copy of the master docket was filed with the prior petition. However, the prior petition and the instant petition only include a copy of a docket report for the instant application.

MPEP section 711.03(c)(I)(A) states, with emphasis added,

A copy of the practitioner's record(s) ... should include the *master docket for the firm*. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing *all* replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted.

A master docket is a docket that covers all patent-related matters handled by the entire law firm. Since the Notice of Allowance was mailed October 14, 2008, the issue fee and publication fee were due on January 14, 2009. Therefore, a copy of a master docket showing *all* of the firm's patent-related matters due January 14, 2009, is required. However, if a *master docket* is not maintained by the law firm, then the firm may simply make such a statement and is *not* required to provide additional evidence of non-receipt in addition to the evidence filed with the instant petition.

Any request for reconsideration should include the relevant portion of the firm's master docket or a statement the firm does not maintain a "master docket." Please note, the copy of the master docket may be redacted to the extent necessary to preserve confidential matters.

Petitioner has not submitted a "Part B - FEE(S) TRANSMITTAL" form. The prior decision stated,

The petition indicates the issue fee, publication fee, and a petition fee of \$540 should be charged to petitioner's deposit account. However, a petition fee is not required for a

petition under 37 CFR 1.181. Therefore, the Office has only charged the issue fee (\$1,510) and the publication fee (\$300) to the deposit account.

A copy of the papers mailed to petitioner on October 14, 2008, is enclosed. As stated on the Notice of Allowance, a copy of "Part B - FEE(S) TRANSMITTAL" mailed with a Notice of Allowance, or its equivalent, **must** be filed when submitting an issue fee and/or publication fee. Therefore, any request for reconsideration should be accompanied by a completed copy of the Part B - Fee Transmittal form enclosed or its equivalent.

Assuming a request for reconsideration is filed and granted, the Office can forward the matter to Publications Branch for issuance of a patent *if* a completed "Part B - FEE(S) TRANSMITTAL" form is submitted with the request for reconsideration. If the form is not submitted, the Office of Petitions will need to forward the matter to the Technology Center to have a new Notice of Allowance mailed setting a new time period for reply. In other words, a failure to supply a completed "Part B - FEE(S) TRANSMITTAL" form with the request for reconsideration will likely result in a significant delay in the issuance of a patent.

Unless filed by EFS Web, further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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